

U.S. Patent Appln. Ser. No. 10/625,605
Amendment and Response to Office Action dated May 19, 2005
September 19, 2005
Attorney Docket No. 60783.000005

REMARKS

The Office Action has been carefully considered. Claims 1-14 and 16 have been canceled. Claims 15 and 17-31 are pending. The specification and claims 15, 18 and 28 have been amended. No new matter has been added by way of amendment. The specification has been amended to correct typographical errors. Support for the amendments to claims 15, 18 and 28 can be found in the Specification as originally filed at least at p. 11, lines 4-10; p. 15, lines 1-7; p. 16, lines 11-22; p. 17, lines 17-18; Fig. 2a.

The Examiner has informed Applicants that should claim 18 be found allowable, claim 16 will be objected to under 37 C.F.R. § 1.75 as being a substantial duplicate. See Office Action at ¶ 2. Claim 28 is rejected under 35 U.S.C. § 112, first paragraph for failing to comply with the enablement requirement because the invention allegedly cannot be practiced as claimed. See Office Action at ¶ 4. Claims 15 and 18 have been rejected under 35 U.S.C. § 112, second paragraph for failing to particularly point out and distinctly claim the subject matter which Applicants regard as their invention because there is allegedly insufficient antecedent basis for certain limitations of these claims. See Office Action at ¶ 6. Claims 15-18 and 20 have been rejected under 35 U.S.C. § 102(b) as allegedly anticipated by USPN 5,234,126 to Jonas *et. al.*, ("Jonas"). See Office Action at ¶ 8. Claims 18 and 19 have been rejected under 35 U.S.C. § 102(b) as allegedly anticipated by USPN 4,667,454 to McHenry *et. al.*, ("McHenry"). See Office Action at ¶ 9. Claim 18 has been rejected under 35 U.S.C. § 102(b) as allegedly anticipated by USPN 4,497,855 to Agrawal *et. al.*, ("Agrawal"). See Office Action at ¶ 10. Claims 21-26 have been rejected under 35 U.S.C. § 103(a) as allegedly unpatentable over Jonas in view of US Published Application 2002/0187290 to Hodson *et. al.*, ("Hodson"). See Office Action at ¶ 12. Claim 27 has been rejected under 35 U.S.C. § 103(a) as allegedly unpatentable over Jonas in view of Hodson and USPN 5,202,192 to Hope *et. al.*, ("Hope"). See Office Action at ¶ 13. Claims 29-31 have been rejected under 35 U.S.C. § 103(a) as allegedly unpatentable over Agrawal. See Office Action at ¶ 14.

Applicants respectfully submit that all pending claims are allowable over the cited references in view of the amendments and arguments made herein, and respectfully request

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reconsideration and allowance of the same.

I. Acceptance of Drawings and Consideration of Information Disclosure Statement.

Applicants thank the Examiner for acceptance of the drawings submitted on 24 July 2003 and consideration of the references cited in the Information Disclosure Statement filed on 10 November 2003.

II. Rejection Under 35 U.S.C. § 101.

The Examiner has informed Applicants that should claim 18 be found allowable, claim 16 will be objected to under 37 C.F.R. § 1.75 as being a substantial duplicate. *See* Office Action at ¶ 2. Applicants have canceled claim 16, and respectfully request that this rejection be withdrawn.

III. Rejections Under 35 U.S.C. § 112.

Claim 28 is rejected under 35 U.S.C. § 112, first paragraph for failing to comply with the enablement requirement because the invention allegedly cannot be practiced as claimed. *See* Office Action at ¶ 4. Applicants have amended claim 28 and respectfully request that this rejection be withdrawn. Support for the amendment to claim 28 can be found in the Specification as originally filed at p. 15, lines 1-7.

Claims 15 and 18 have been rejected under 35 U.S.C. § 112, second paragraph for failing to particularly point out and distinctly claim the subject matter which Applicants regard as their invention because there is allegedly insufficient antecedent basis for certain limitations of these claims. *See* Office Action at ¶ 6. Claims 15 and 18 have been amended to correct typographical errors, and respectfully request that this rejection be withdrawn.

IV. Rejections Under 35 U.S.C. § 102.

Claims 15-18 and 20 have been rejected under 35 U.S.C. § 102(b) as allegedly anticipated by Jonas. *See* Office Action at ¶ 8. Claims 18 and 19 have been rejected under 35 U.S.C. § 102(b) as allegedly anticipated by McHenry. *See* Office Action at ¶ 9. Claim 18 has been rejected under 35 U.S.C. § 102(b) as allegedly anticipated by Agrawal. *See* Office Action at ¶ 10. Applicants respectfully submit that the cited references do not disclose each and every limitation of the rejected claims, as amended, and therefore respectfully request that these

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rejections be withdrawn for the following reasons.

A. Rejection of Claims 15-18 and 20 over Jonas.

Claims 15-18 and 20 have been rejected under 35 U.S.C. § 102(b) as allegedly anticipated by Jonas. *See* Office Action at ¶ 8. Specifically, with regard to claim 15, the Examiner states that Jonas "teach[es] a method for forming a plastic container (abstract), comprising: selecting at least one polymer for a plastic container (column 13, lines 57-68); and forming the plastic container (column 14, lines 1-5); wherein the plastic container comprises: a mouth; a bottom surface; and a container wall between the mouth and the bottom surface (column 8, lines 59-68), wherein one of the bottom surface or the container wall flexes inward into the cavity of the plastic container (column 5, lines 19-27); wherein further the inward flexing of the bottom surface of the container wall reduces a pressure differential between the inside of the container and the atmospheric pressure when either the container is hot-filled with food product or when the container is transported from a locale of lower atmospheric pressure to higher atmospheric pressure (claims 1); and wherein further the non-flexing surface maintains the same form from prior to hot-filling or transport (claim 1)." *See* Office Action at ¶ 8.

With respect to claim 18, the Examiner states that Jonas "teach[es] a method for forming a plastic container with a selectively deformable surface (abstract), comprising: selecting at least one polymer for a plastic container (column 13, lines 57-68); and thermoforming a plastic container from the heated polymer (column 14, lines 1-5); wherein the plastic container comprises: a mouth; a bottom surface; and a container wall between the mouth and the bottom surface (column 8, lines 59-68), wherein one of the bottom surface or the container wall flexes inward into the cavity of the plastic container (column 5, lines 19-27); wherein further the inward flexing of the bottom surface of the container wall reduces a pressure differential between the inside of the container and the atmospheric pressure when either the container is hot-filled with food product or when the container is transported from a locale of lower atmospheric pressure to higher atmospheric pressure (claims 1); and wherein further the non-flexing surface maintains the same form from prior to hot-filling or transport (claim 1)." *See* Office Action at ¶ 8.

Applicants respectfully submit that Jonas does not teach each and every limitation of

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claims 15 and 18, as amended. Applicants have amended claims 15 and 18 to include the limitation that the container has a bottom surface, wherein prior to hot-filling of the container with a food product, the bottom surface is outwardly flexed. Jonas does not disclose, expressly or inherently, a container having a bottom surface wherein prior to hot-filling of the container with a food product, the bottom surface is outwardly flexed. Rather, the container disclosed in Jonas comprises an *inwardly* flexed bottom surface prior to hot-filling. *See, e.g.*, Jonas at Fig. 5; col. 8, lines 61-68 (element 16 of Fig. 5 references a "recessed circular center portion").

In addition, Jonas does not disclose a container for hot-fill food packaging applications at all. Rather, the container disclosed in Jonas is suitable for terminal sterilization without panel buckling. *See* Jonas at col. 4, lines 45-50. Terminal sterilization is a process to kill harmful organisms that are viable at about pH 4.6, which requires raising product and container temperatures to the equivalent of 250°F. *See* Jonas at col. 2, lines 18-20. In contrast, hot-fill food packaging takes place at much lower temperatures, *e.g.* at 180°F. *See* Jonas at col. 2, lines 5-8. There is no teaching in Jonas of how the disclosed container performs at temperatures lower than 250°F, but indicates that containers will perform differently at the higher temperatures incurred during sterilization as compared to hot filling applications. *See* Jonas at col. 2, lines 5-41. Accordingly, Jonas does not disclose a container having an outwardly flexed bottom surface prior to hot-filling of the container with a food product, wherein one of the outwardly flexed bottom surface or the container wall is configured to flex inward into the cavity of the plastic container during cooling of the plastic container following hot-filling of the container with food product.

A container comprising an outwardly flexed bottom surface prior to hot-filling the container with a food product is not inherently disclosed in Jonas, either. Jonas emphasizes that "[i]t is critical that during the filling, sealing, and terminal sterilization processes the bottoms of these containers can be configured so that they are capable of deflecting *both inward and outward* in order to provide adequate volumetric contraction and expansion of the filled, sealed containers in order to compensate for container-to-container pressure variability due to various causes . . ." *See* Jonas at col. 4, lines 50-60 (emphasis added). There is no extrinsic evidence

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that the container of Jonas necessarily has an outwardly flexed bottom surface *prior* to hot-filling; further, Jonas teaches that it is "critical" that the container bottom surface be capable of deflecting outward *during* filling, sealing and terminal sterilization. Accordingly, the container of claims 15 and 18 is not inherent in Jonas, either. See MPEP § 2112 ("To establish inherency, the extrinsic evidence 'must make clear that the missing descriptive matter is necessarily present in the thing described in the reference . . .'), citing *In re Robertson*, 169 F.3d 743, 745, 49 USPQ2d 1949, 1950-51 (Fed. Cir. 1999).

Further, Jonas teaches that containers for use in high-speed, high-temperature, short-time terminal sterilization processes *must* be designed to "deform reversibly during the process . . . and return to [their] original shape." See Jonas at col. 3, lines 33-42, lines 47-54. In contrast, the container of claims 15 and 18, as amended, includes the limitation that the non-flexing surface of the container maintains the same form from prior to hot-filling or transport but that the flexing surface maintains its inwardly flexed configuration following cooling of the hot-filled container. Again, Jonas does not disclose a container that necessarily maintains its inwardly flexed configuration following cooling of the hot-filled container, and in fact teaches that the Jonas container *must* return to its original shape.

Jonas does not disclose each and every limitation of claims 15 and 18, and specifically does not disclose, expressly or inherently, a container having a bottom surface that is outwardly flexed prior to hot-filling of the container with a food product, and a flexing surface that flexes inwardly during cooling of the plastic container following hot-filling and maintains its inwardly flexed configuration following cooling of the hot-filled container. Applicants therefore respectfully request that this rejection be withdrawn with respect to claims 15 and 18, and also with respect to claims 17 and 20, which depend from claims 15 and 18, respectively. Applicants also respectfully submit that this rejection is moot with regard to claim 16, which has been canceled.

B. Rejection of Claims 18 and 19 over McHenry.

Claims 18 and 19 have been rejected under 35 U.S.C. § 102(b) as allegedly anticipated by McHenry. See Office Action at ¶ 9. With respect to claim 18, the Examiner states that McHenry

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“teach[es] a method for forming a plastic container with a selectively deformable surface (abstract), comprising: selecting at least one polymer for a plastic container (column 4, lines 48-61); and thermoforming a plastic container from the heated polymer (column 3, line 39); wherein the plastic container comprises: a mouth; a bottom surface; and a container wall between the mouth and the bottom surface (Fig. 1A), wherein one of the bottom surface or the container wall flexes inward into the cavity of the plastic container (Fig. 1B); wherein further the inward flexing of the bottom surface of the container wall reduces a pressure differential between the inside of the container and the atmospheric pressure when either the container is hot-filled with food product or when the container is transported from a locale of lower atmospheric pressure to higher atmospheric pressure (reduction of volume will inherently perform this task); and wherein further the non-flexing surface maintains the same form from prior to hot-filling or transport (Fig. 1A and 1B).” See Office Action at ¶ 9.

Applicants respectfully submit that McHenry does not teach each and every limitation of claim 18, as amended. Applicants have amended claim 18 to include the limitation that the container has a bottom surface, wherein prior to hot-filling of the container with a food product, the bottom surface is outwardly flexed. McHenry does not disclose, expressly or inherently, a container having a bottom surface wherein prior to hot-filling of the container with a food product, the bottom surface is outwardly flexed. Rather, the container disclosed in McHenry comprises an “substantially flat” bottom surface prior to hot-filling. See, e.g., McHenry at Fig. 1A; col. 5, lines 3-7 (element 7 of Fig. 1A references a “substantially flat portion”).

In addition, McHenry does not disclose a container for hot-fill food packaging applications at all. Rather, the container disclosed in McHenry is suitable for sterilization of low acid foods, which occurs at about 250°F. See McHenry at col. 5, lines 44-47. In contrast, hot-fill food packaging takes place at much lower temperatures, e.g. at 180°F. See Jonas at col. 2, lines 5-8. There is no teaching in McHenry of how the disclosed container performs at temperatures lower than 250°F, but indicates that containers will perform differently at the higher temperatures incurred during sterilization as compared to hot filling applications. See McHenry at col. 5, lines 36-51. Accordingly, McHenry does not disclose a container having an outwardly flexed bottom

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surface prior to hot-filling of the container with a food product, wherein one of the outwardly flexed bottom surface or the container wall is configured to flex inward into the cavity of the plastic container during cooling of the plastic container following hot-filling of the container with food product.

A container comprising an outwardly flexed bottom surface prior to hot-filling the container with a food product is not inherently disclosed in McHenry, either. McHenry emphasizes that "[t]he container must be designed to deform outwardly at a container internal pressure below the pressure which causes bursting of the container at the particular cooking temperature . . . [f]or example, at 250°F, a temperature commonly used for sterilizing low acid foods . . . the container will burst if the internal pressure of the container exceeds its external pressure by approximately 13.1 p.s.i. . . . [t]he amount of outward distention of the container bottom wall, and hence the volume increase in the container, during the cooking cycle, must be sufficient as to prevent bursting of the container by reducing the internal pressure." See McHenry at col. 5, lines 41-56. There is no extrinsic evidence that the container of McHenry necessarily has an outwardly flexed bottom surface *prior* to hot-filling and in fact teaches that the container bottom surface must be designed to deform outwardly to prevent bursting of the container at the particular cooking temperature. Accordingly, the container of claim 18 is not inherent in McHenry, either. See MPEP § 2112 ("To establish inherency, the extrinsic evidence 'must make clear that the missing descriptive matter is necessarily present in the thing described in the reference . . .'), citing *In re Robertson*, 169 F.3d 743, 745, 49 USPQ2d 1949, 1950-51 (Fed. Cir. 1999).

McHenry does not disclose each and every limitation of claim 18, and specifically does not disclose, expressly or inherently, a container having a bottom surface that is outwardly flexed prior to hot-filling of the container with a food product, and a flexing surface that flexes inwardly during cooling of the plastic container following hot-filling and maintains its inwardly flexed configuration following cooling of the hot-filled container. Applicants therefore respectfully request that this rejection be withdrawn with respect to claim 18, and also with respect to claim 19, which depends from claim 18.

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C. Rejection of Claim 18 over Agrawal.

Claim 18 has been rejected under 35 U.S.C. § 102(b) as allegedly anticipated by Agrawal. *See* Office Action at ¶ 10. The Examiner states that Agrawal “teach[es] a method for forming a plastic container with a selectively deformable surface (abstract, polyester), comprising: selecting at least one polymer for a plastic container (column 6, lines 44-50); and thermoforming a plastic container from the heated polymer (column 6, lines 44-50); wherein the plastic container comprises: a mouth; a bottom surface; and a container wall between the mouth and the bottom surface (Figure 6), wherein one of the bottom surface or the container wall flexes inward into the cavity of the plastic container (abstract); wherein further the inward flexing of the bottom surface of the container wall reduces a pressure differential between the inside of the container and the atmospheric pressure when either the container is hot-filled with food product or when the container is transported from a locale of lower atmospheric pressure to higher atmospheric pressure (reduction of volume will inherently perform this task); and wherein further the non-flexing surface maintains the same form from prior to hot-filling or transport (Fig. 1A and 1B).” *See* Office Action at ¶ 10.

Applicants respectfully submit that Agrawal does not teach each and every limitation of claim 18, as amended. Applicants have amended claim 18 to include the limitation that the container has a bottom surface, wherein prior to hot-filling of the container with a food product, the bottom surface is outwardly flexed. Agrawal does not disclose, expressly or inherently, a container having a bottom surface wherein prior to hot-filling of the container with a food product, the bottom surface is outwardly flexed. Rather, the container disclosed in Agrawal comprises an inwardly flexed bottom surface prior to hot-filling. *See, e.g.* Agrawal at Fig. 2; Fig. 3.

A container comprising an outwardly flexed bottom surface prior to hot-filling the container with a food product is not inherently disclosed in Agrawal, either. Agrawal teaches the use of a “thermoelastically deformable” region that is formed during molding in the container wall at a temperature higher than incurred during hot filling to offset the decrease in container volume during hot filling and sealing. *See* Agrawal at col. 4, lines 27-31. Agrawal defines the

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term "thermoelastically deformable" to reference "the property of a controlled heat-induced deformation of a material to a previous configuration." See Agrawal at col. 4, lines 39-42. When the container of Agrawal is hot filled and capped, this "thermoelastically deformable" region in the container wall "remembers" its previous configuration which was formed at a higher temperature during molding and tends to return to that configuration. See Agrawal at col. 4, lines 42-45. There is no extrinsic evidence that the container of Agrawal necessarily has an outwardly flexed bottom surface prior to hot-filling, and a flexing surface that flexes inwardly during cooling of the plastic container following hot-filling and maintains its inwardly flexed configuration following cooling of the hot-filled container. Rather, Agrawal teaches that the appropriate offsetting decrease in container volume container to withstand the volume change in the container during cooling is provided by the "thermoelastically deformable" region in the container wall. See Agrawal at col. 4, lines 42-45. Accordingly, the container of claim 18 is not inherent in Agrawal, either. See MPEP § 2112 ("To establish inherency, the extrinsic evidence 'must make clear that the missing descriptive matter is necessarily present in the thing described in the reference . . .'), citing *In re Robertson*, 169 F.3d 743, 745, 49 USPQ2d 1949, 1950-51 (Fed. Cir. 1999).

Agrawal does not disclose each and every limitation of claim 18, and specifically does not disclose, expressly or inherently, a container having a bottom surface that is outwardly flexed prior to hot-filling of the container with a food product, and a flexing surface that flexes inwardly during cooling of the plastic container following hot-filling and maintains its inwardly flexed configuration following cooling of the hot-filled container. Applicants therefore respectfully request that this rejection be withdrawn with respect to claim 18.

V. Rejections Under 35 U.S.C. 103.

Claims 21-26 have been rejected under 35 U.S.C. § 103(a) as allegedly unpatentable over Jonas in view of Hodson. See Office Action at ¶ 12. Claim 27 has been rejected as allegedly unpatentable over Jonas in view of Hodson and Hope. See Office Action at ¶ 13. Claims 29-31 have been rejected as allegedly unpatentable over Agrawal. See Office Action at ¶ 14. Applicants respectfully submit that the cited references, even in combination, do not disclose

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each and every limitation of the rejected claims, as amended. Further, Applicants submit that there is no suggestion or teaching to combine the cited references, and there is no reasonable expectation of success from a combination of the cited references. Accordingly, Applicants submit that the cited references do not form a *prima facie* case of obviousness of the rejected claims, as amended, and respectfully request that these rejections be withdrawn.

A. Rejection of Claims 21-26 Over Jonas in View of Hodson.

Claims 21-26 have been rejected under 35 U.S.C. § 103(a) as allegedly unpatentable over Jonas in view of Hodson. *See* Office Action at ¶ 12. Hodson discloses a laminated thermoformable film structure useful for packaging food products. *See* Hodson at Abstract. However, Hodson does not disclose each and every limitation of claim 18, from which claims 21-26 depend, that are not disclosed in Jonas either and therefore a combination of Hodson and Jonas does not form a *prima facie* case of obviousness of the invention claimed in claim 18. *See* MPEP § 2142. Specifically, for the reasons stated in Sec. IV(A) *supra*, Jonas does not disclose, expressly or inherently, a container having a bottom surface that is outwardly flexed prior to hot-filling of the container with a food product, and a flexing surface that flexes inwardly during cooling of the plastic container following hot-filling and maintains its inwardly flexed configuration following cooling of the hot-filled container. Hodson does not disclose these limitations, either.

Since a combination of Hodson and Jonas does not disclose each and every limitation of claim 18, from which claims 21-26 depend, the combination of Hodson and Jonas does not form a *prima facie* case of obviousness and Applicants respectfully request that this rejection be withdrawn.

B. Rejection of Claim 27 Over Jonas in View of Hodson and Hope.

Claim 27 has been rejected as allegedly unpatentable over Jonas in view of Hodson and Hope. *See* Office Action at ¶ 13. Hope discloses a polyolefin-containing adhesive blend for bonding polypropylene to polar materials, and multilayer structures produced using the adhesive blend. *See* Hope at Abstract. However, Hope does not disclose each and every limitation of claim 18, from which claims 21-26 depend, that are not disclosed in Jonas or Hodson either and

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therefore a combination of Hope with Hodson and Jonas does not form a *prima facie* case of obviousness of the invention claimed in claim 18. See MPEP § 2142. Specifically, for the reasons stated in Sec. IV(A) and V(A) *supra*, the combination of Jonas and Hodson does not disclose, expressly or inherently, a container having a bottom surface that is outwardly flexed prior to hot-filling of the container with a food product, and a flexing surface that flexes inwardly during cooling of the plastic container following hot-filling and maintains its inwardly flexed configuration following cooling of the hot-filled container. Hope does not disclose these limitations, either.

Since a combination of Hope, Hodson and Jonas does not disclose each and every limitation of claim 18, from which claims 21-26 depend, the combination of Hope, Hodson and Jonas does not form a *prima facie* case of obviousness and Applicants respectfully request that this rejection be withdrawn.

C. Rejection of Claims 29-31 over Agrawal

Claims 29-31 have been rejected as allegedly unpatentable over Agrawal. See Office Action at ¶ 14. However, for the reasons stated in Sec. IV(C) *supra*, Agrawal does not disclose each and every limitation of claim 18, from which claims 29-31 depend, and specifically does not disclose, expressly or inherently, a container having a bottom surface that is outwardly flexed prior to hot-filling of the container with a food product, and a flexing surface that flexes inwardly during cooling of the plastic container following hot-filling and maintains its inwardly flexed configuration following cooling of the hot-filled container. Accordingly, Agrawal does not form a *prima facie* case of obviousness of claim 18 and Applicants respectfully request that this rejection be withdrawn.

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CONCLUSION

Applicants respectfully submit that pending claims 15 and 17-31 are allowable and request allowance of the same. This Amendment and Response has been filed within four months of the mailing date of the Office Action, and the Commissioner is hereby authorized to charge the fee of \$60.00 for a one month extension of time from the undersigned's Deposit Account No. 50-0206. In the event any variance exists between the amount authorized and the fees determined to be due, please charge or credit any difference to the undersigned's Deposit Account No. 50-0206.

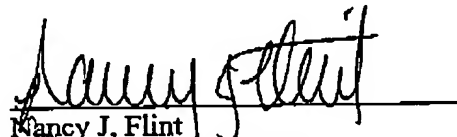
Respectfully submitted,

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